Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
CONNECT AMERICA FUND	)	WC Docket No. 10-90
A NATIONAL BROADBAND PLAN FOR OUR FUTURE	)	GN Docket No. 09-51
ESTABLISHING JUST AND REASONABLE RATES FOR LOCAL EXCHANGE CARRIERS	)	WC Docket No. 07-135
HIGH-COST UNIVERSAL SERVICE SUPPORT	)	WC Docket No. 05-337
DEVELOPING A UNIFIED INTERCARRIER COMPENSATION REGIME	)	CC Docket No. 01-92
FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE	)	CC Docket No. 96-45
LIFELINE AND LINK-UP	)	WC Docket No. 03-109

COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE, CINCINNATI BELL INC., HARGRAY TELEPHONE COMPANY, INC., AND HICKORY TECH CORPORATION

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The Independent Telephone & Telecommunications Alliance ("ITTA"), Cincinnati Bell Inc., Hargray Telephone Company, Inc., and Hickory Tech Corporation[1] (hereinafter referred to as "Joint Commenters") hereby submit their comments with respect to the August 3, 2011 *Public Notice* issued by the Federal Communications Commission ("FCC" or "Commission") in the

[1] Hickory Tech Corporation is the parent company of incumbent carriers Mankato Citizens Telephone Company d/b/a HickoryTech, Mid-Communications, Inc. d/b/a HickoryTech and Heartland Telecommunications Company of Iowa d/b/a HickoryTech.

above-captioned proceedings.[2] The *Public Notice* poses a series of questions designed to elicit comment on how the specific proposals for universal service fund ("USF") and intercarrier compensation ("ICC") reform offered by six price cap companies ("ABC Plan"), several rural carrier associations ("ROR Plan") and the State Members of the Federal-State Joint Board on Universal Service ("State Members Plan")[3] "comport with the Commission's articulated objectives and statutory requirements."[4]

I. SUMMARY AND INTRODUCTION

The Joint Commenters applaud the efforts of industry stakeholders and State regulators to devise a framework that would achieve much-needed reform of outdated federal USF and ICC rules and expand the reach of broadband to unserved and underserved areas. In general, the ABC Plan and the ROR Plan[5] offer useful and constructive starting points for how such reform can be achieved. The plans provide reasonable paths toward the longstanding goal of rational

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[2] *Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, DA 13-1348 (rel. Aug. 3, 2011) ("*Public Notice*").

[3] Comments by the State Members of the Federal-State Joint Board on Universal Service, WC Docket No. 10-90, *et al.* (filed May 2, 2011) ("State Member Comments"); Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.* (filed July 29, 2011) ("ABC Plan"); Letter from Walter B. McCormick, Jr., USTelecom, Robert W. Quinn, Jr., AT&T, Melissa Newman, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, Michael D. Rhoda, Windstream, Shirley Bloomfield, NTCA, John Rose, OPASTCO, and Kelly Worthington, WTA, to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.* (filed July 29, 2011) ("Joint Letter").

[4] *Public Notice*, at 1-2. *See Connect America Fund: A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011).

[5] The ABC Plan and the ROR Plan are referred to herein jointly as the "consensus framework."

and predictable federal USF and ICC programs that meet the broadband needs of all Americans. As explained herein, however, certain modifications to the plans must be made to ensure that the plans incorporate the needs of *all* mid-size carriers including, importantly, those carriers who were not given the opportunity to participate directly in the development of the plans.[6] In the comments that follow, the Joint Commenters propose several important modifications to the ABC Plan and the ROR Plan designed to reflect the business realities facing the mid-size carriers who were not afforded a seat at the negotiating table.

The Joint Commenters are mid-size companies governed in the interstate jurisdiction variously by price-cap and rate-of-return regulations. The ITTA member companies collectively serve approximately 19.5 million access lines in predominantly rural areas with low population densities in 44 states and have, on average, deployed broadband to approximately 85 percent of their respective service areas. Cincinnati Bell is a mid-size carrier that provides long-distance, broadband, VoIP, wireless, entertainment and data services throughout southwestern Ohio, northern Kentucky and southeastern Indiana. In light of the variety and scope of the Joint Commenters' regulatory status and operational achievements, they are well positioned to offer a balanced view of how to reform comprehensively both the federal USF and ICC regimes for *all* mid-size carriers.

As a threshold matter, the cost model used for determining high-cost support levels must be filed and stakeholders must be afforded a reasonable opportunity to review the model and provide input to the Commission. The ABC Plan supporters urge adoption of the CostQuest

[6] Two ITTA member companies, CenturyLink and FairPoint Communications, are signatories to the ABC Plan and both support the consensus framework. *See* Joint Letter. The ABC Plan signatories, including CenturyLink and Fairpoint, are filing joint comments in response to the *Public Notice*. Those comments will address the price cap components of the consensus framework.

Broadband Analysis Tool ("CQBAT"), a cost model they commissioned and helped design. However, many mid-size carriers and other industry stakeholders with critical interests in this proceeding were not invited to participate directly in the discussions that led to the formulation of the ABC Plan and the development of the CQBAT model. Moreover, they have not been permitted access to the CQBAT model to determine specific potential impacts on their companies should the model be adopted by the Commission. The Commission should refrain from drawing any conclusions regarding the sufficiency, accuracy, reliability or usefulness of the CQBAT model until all interested parties have been afforded access to the model and a reasonable opportunity to review it and present their input to the Commission. To do otherwise would be blatantly arbitrary and capricious.

The reforms under consideration would result in fundamental changes to current rules governing federal high-cost universal service support and intercarrier compensation. Consequently, the reasons underlying a carrier's present regulatory classification (whether it is regulated today as a price cap or rate-of-return carrier) are likely to change. The Commission should refrain from creating any roadblocks that would impede a carrier's ability to effectuate a change in its regulatory classification at whatever time the carrier deems appropriate.

The ABC Plan and the ROR Plan contain detailed proposals for transitioning terminating interstate and intrastate switched access rates to \$0.0007/minute. The Joint Commenters do not support a default rate of \$0.0007. However, should the Commission choose to adopt the \$0.0007 end rate, several critical modifications to the transition plans must be made before the plans can be adopted by the Commission. The transition plans must be adjusted to provide for a two-year review period during which the Commission would be required to conduct a proceeding to determine how the transitions are progressing and whether any changes in the length of the transition period, the steps in the transition process or the default rate that will apply at the end of the transition period should be made.

The Commission asks several questions regarding the inclusion of a right-of-first refusal ("ROFR") for incumbent local exchange carriers ("ILECs") to accept a model-derived support amount in a wire center if the ILEC already has made high-speed Internet available to more than 35 percent of the service locations in the wire center. The Joint Commenters endorse a ROFR option as proposed in the ABC Plan and urge rejection of suggestions to modify it by (1) applying it to the provider with the most broadband deployment, (2) deeming it inapplicable in areas where there are at least two providers that exceed the threshold, or (3) excluding areas that overlap with a facilities-based competitor.

The ROFR option acknowledges the business realities that have resulted from the imposition of a carrier-of-last-resort ("COLR") obligation on ILECs as well as the benefits the COLR obligation has achieved for consumers. The suggested modifications fail to properly take into account the regulatory structure and requirements that have applied to ILECs as COLRs and would unfairly penalize them and their customers with no offsetting public benefit.

The Commission also asks several questions relating to the proper role of the States in the administration of the Connect America Fund ("CAF"). The Joint Commenters believe that the Commission should be responsible – with input from the States and industry stakeholders – for developing, implementing and enforcing all obligations associated with the federal CAF. It is the Commission's job to administer the federal universal service program and additional reporting requirements, oversight responsibilities or compliance obligations by the States are not necessary and could lead to significant and costly unintended consequences.

II. THE UNIVERSAL SERVICE REFORMS ADOPTED BY THE COMMISSION MUST ENSURE THAT SUPPORT TO SERVE HIGH-COST AREAS IS SPECIFIC, PREDICTABLE AND SUFFICIENT

A. The Basic Structure Of The Industry-Sponsored Reform Plans Is Sound.

As noted above, the Joint Commenters believe that the basic structure of the CAF as proposed in the ABC Plan and the ROR Plan represents an appropriate approach to structuring the federal high-cost USF support mechanism going forward. The questions relating to the appropriate composition and scope of the federal high-cost USF posed in the *Public Notice* should be answered consistent with the framework contained in those proposals.

The Commission asks whether the CAF should be broken into two components, one focused on fixed voice and broadband service (wired or wireless) in areas that are uneconomic to serve with fixed service and one focused on providing support for mobile voice and broadband service in areas that are uneconomic to serve via mobile service.[7] The ABC Plan and the ROR Plan both endorse the creation of a separate mobility fund that would "support[] the provision of mobile broadband service in those high-cost areas that will not receive service as a result of planned commercial mobile broadband deployments."[8] The Joint Commenters agree with this approach. Fixed and mobile broadband services are sufficiently different in nature and price that the Commission should develop separate support programs for each within the CAF.[9]

The *Public Notice* also asks the fundamental question of whether the Commission should abandon the current references to rural and non-rural carriers in its universal service rules and

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[7] *Public Notice*, at 2.

[8] ABC Plan, Attachment 1, at 8. *See also* Comments of NECA, NTCA, OPASTCO and WTA, WC Docket No. 90-10, et al. (filed Apr. 18, 2011) ("ROR Plan"), at 83.

[9] ITTA previously has supported the creation of a mobility-specific support program. *See, e.g.*, Comments of ITTA, WT Docket No. 10-208, 2 (filed Dec. 16, 2010) ("ITTA Mobility Fund Comments").

instead determine support for carriers based on their operation in rural areas that are uneconomic to serve and whether they are regulated as a rate-of-return or price cap carrier in the interstate jurisdiction.[10] The ABC Plan, the ROR Plan and the State Members Plan all provide for support to be determined based on whether carriers operate in high-cost rural areas without reference to whether they are labeled rural or non-rural carriers under the FCC's rules.[11] This is the correct approach.

Section 254 of the Act directs regulators to implement "specific, predictable and sufficient ... mechanisms to preserve and advance universal service."[12] Thus, whether a particular carrier receives USF support and how much that carrier receives should depend on its cost to serve areas that are deemed high cost. Arbitrary categories that may be divorced from or work at cross purposes to the statutory goal of "specific, predictable and sufficient" support are not contemplated by Section 254 and have no place in the analysis.

Some carriers who serve customers in rural areas including, importantly, some ITTA members, do not receive sufficient USF support under the current high-cost funding mechanisms.[13] Some larger carriers have similar characteristics to smaller "rural" carriers in that the substantial costs of deploying and operating telecommunications networks are directly observable in the average costs they report to regulators. Others, however, serve mixtures of higher and lower cost areas, often within the same study area. For many of these latter carriers, the cost problems that are associated with serving high-cost areas are often masked from USF support mechanisms under the current rules.[14] The industry-generated plans under

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[10] *Public Notice*, at 3.

[11] Joint Letter, at 2; State Member Comments, at 38-39.

[12] 47 U.S.C. § 254(b)(5).

consideration would cure this problem and, thus, more appropriately implement the mandates of Section 254.[15]

B. Carriers Should Be Free To Change Their Regulatory Status In Response To The Reforms Adopted By The Commission.

The current rules governing federal high-cost universal service support and intercarrier compensation will undergo fundamental change if the Commission adopts the reforms proposed in its Notice of Proposed Rulemaking. It follows that the reasons underlying a carrier's present regulatory classification (whether it is regulated today as a price cap or rate-of-return carrier) are likely to change. In this environment, it is essential that the Commission not directly or indirectly preclude carriers from changing their regulatory status. Some carriers that currently operate under rate-of-return regulation may be planning to move to price caps over the next several years and these carriers could be penalized if the Commission were to restrict their ability to effectuate their plans. Every carrier should be free to assess the impact of the new rules on its business and make a determination as to whether it would be better served by maintaining its current regulatory status or by changing the manner in which it is regulated on the federal level.

The Commission should refrain from creating any roadblocks that would impede this analysis or a carrier's ability to effectuate a change in regulatory classification at whatever time the carrier deems appropriate. Straightforward, easy-to-administer rules should be adopted to

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[13] *See, e.g.,* Comments of ITTA, WC Docket No. 05-337, CC Docket No. 96-45 (filed Apr. 17, 2008) ("ITTA April 18th Comments"), at 14-17.

[14] Serving the low-cost areas does not help to cover the costs of deploying and maintaining telecommunications services in high-cost areas because competition in the low-cost areas forces prices, and thus revenues, to reflect the lower costs.

[15] Under the ABC Plan, the assessment of whether an area is high-cost is made on a census block-by-census block basis, thereby addressing the so-called "rural-rural divide." *See* ABC Plan, Attachment 1, at 2, 3.

govern how a carrier will be treated should it decide to change its regulatory status during the pendency of the intercarrier compensation transition period or the life of the CAF.

C. The Cost Model Used For Determining High-Cost Support Levels Must Be Filed And Stakeholders Must Be Afforded A Reasonable Opportunity To Review The Model And Provide Input.

The ABC Plan proposes that for every census block that does not have an unsupported broadband competitor as of January 1, 2012, the Commission would use a forward-looking cost model to determine the cost of providing broadband service in the census block.[16] The Joint Commenters endorse this approach.[17] The ABC Plan supporters urge the Commission to adopt the CQBAT model which they maintain allows the calculation of the forward-looking cost of providing broadband and the estimated support levels on a census block basis.[18] In the *Public Notice*, the Commission acknowledges the ABC Plan signatories' representations regarding the CQBAT model and requests comment on "what information would need to be filed" regarding the CQBAT model "for the Commission to consider adopting it …"[19]

The Joint Commenters strongly urge the Commission to refrain from drawing any conclusions regarding the sufficiency, accuracy, reliability or usefulness of the CQBAT model until all interested parties have been afforded access to the model and a reasonable opportunity to review and analyze it, run reports, and present their input to the Commission. The Joint Commenters remind the Commission that many mid-size carriers and other industry stakeholders with critical interests in this proceeding were not invited to participate directly in the industry

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[16] ABC Plan, Attachment 1, at 3.

[17] ITTA previously has endorsed the use of a model to determine high-cost support amounts so long as the model reflects a realistic assessment of how costs to serve rural areas are incurred. *See* ITTA April 18th Comments, at 26-29.

[18] *Id.*, at 4. The ABC Plan signatories retained CostQuest Associates, Inc. to develop the CQBAT model. *Id.*

[19] *Public Notice*, at 3.

discussions that led to formulation of the ABC Plan and consequently, those carriers did not participate in the decision to retain CostQuest, the no-doubt extensive discussions that led to the design of the model, nor have they been permitted access to the CQBAT model to determine the specific potential impacts on their companies should the model be adopted by the Commission and used to calculate high-cost USF support.

The Commission must insist that the CQBAT model be submitted on the record and made available to carriers for analysis. It would be blatantly arbitrary and capricious for the Commission to utilize a model to calculate USF support that was developed by a small sub-set of the industry behind closed doors without input from the majority of carriers who would be affected by its use. Moreover, the Commission must afford all interested parties a reasonable period of time once the model is made available in which to review it, run reports, and provide their views to the Commission. It would be equally arbitrary and capricious for the Commission to move forward to calculate high-cost support amounts using the CQBAT model mere weeks after access to the model by non-ABC Plan signatories is finally permitted. Individual ABC Plan signatories not only have determined the model's parameters, they have had the benefit of months to employ the model to calculate company-specific impacts. The same opportunity must be afforded to all other affected carriers.

D. The Cost Model Adopted By The Commission Must Ensure Sufficient Support Levels To Serve High-Cost Areas.

The *Public Notice* asks whether the cost model used to determine high-cost support amounts should be adjusted to take into account the technology actually deployed by the support recipient.[20] This idea should be rejected for several reasons. It clearly is in the public interest for

[20] *Id.*, at 3. The ABC Plan proposes that one technology be used to determine the modeled costs of 4 Mbps download/768 kbps upload service but that support recipients be permitted to use any technology capable of meeting those requirements. ABC Plan, Attachment 1, at 2, 7.

the Commission to encourage the deployment and utilization of the most efficient available technologies. By tying support amounts directly to the technology actually used by a recipient in a supported area, however, the Commission would be creating the opposite incentive. Carriers would be motivated to refrain from employing more efficient, lower-cost technologies since their support levels would be adversely affected as a result. As contemplated, the CAF would operate much like the standard government contracting process.[21] Under that process, the provisioning party has the flexibility to lower its costs by increasing its efficiency or productivity without being penalized. The same principle should apply here.

Moreover, adoption of a 'technology actually deployed' rule would create significant administrative issues that do not have easy solutions. The Commission would have to develop a process for determining whether and when CAF support levels should be adjusted to reflect deployed technologies and a mechanism for adjusting actual support amounts should a carrier deploy a new, lower-cost technology during the course of its funding commitment period. These are difficult but essential administrative concerns that the Commission should refrain from diverting its limited resources to grapple with in this proceeding.

The ABC Plan proposes to give an ILEC the opportunity to accept a model-derived support amount in a wire center if the ILEC already has made high-speed Internet service available to more than 35 percent of the service locations in the wire center.[22] The Joint Commenters endorse the inclusion of a right-of-first-refusal for ILECs that already have made significant broadband investment in high-cost areas. As ITTA has noted previously, offering an ILEC sufficient support so it can preserve and upgrade the network it already has deployed

[21] A CAF recipient would agree to meet certain broadband deployment standards and public interest obligations in return for a specified amount of money.

[22] ABC Plan, Attachment 1, at 6.

would allow current subscribers to benefit from a provider that can continue to provide uninterrupted service. And, importantly, a ROFR option provides some measure of constitutional protection to the ILEC that has not fully recovered the costs of building its network.[23]

Constitutional due process implications arise if there is a significant gap between the elimination of existing support and the replacement of that support with CAF funding. While the Commission has the authority to alter or eliminate support programs and there is no constitutional right to guaranteed government-subsidized profits, the Commission is bound by the Takings Clause of the U.S. Constitution. Regulated entities are constitutionally required to be afforded the opportunity to earn a reasonable rate of return based on regulated assets and costs.[24] A carefully constructed ROFR mechanism could help mitigate constitutional concerns for carriers that already have made significant broadband investment in high-cost areas.

The *Public Notice* poses various questions regarding how the 35 percent broadband deployment threshold for ROFR purposes should be applied, including whether areas overlapping with a facilities-based competitor should be excluded when calculating the percentage, whether the ROFR should go to the provider with the most broadband rather than automatically to the ILEC, and whether the Commission should use competitive bidding if there are at least two providers that exceed the threshold.[25]

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[23] ITTA April 18th Comments, at 25.

[24] The U.S. Supreme Court has held that a government agency cannot simply abruptly change the historic regulatory scheme by eliminating compensation mechanisms without providing an adequate way to recover prudent investment that was recovered through a state-imposed rate-setting methodology. *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 315 (1989) ("*Duquesne Light*") ("[A] State's decision to arbitrarily switch back and forth between methodologies in a way which required investors to bear the risk of bad investments at some times while denying them the benefit of good investments at others would raise serious constitutional questions.").

[25] *Public Notice*, at 4.

These questions misconstrue the basis for the ROFR option. Underlying the offering to ILECs of a ROFR is the understanding that ILECs typically have COLR obligations. COLR requirements were developed in the context of voice service regulation to ensure that as many customers as possible could obtain service at reasonable prices. To meet COLR obligations, ILECs were required to build networks near to where customers reside so that prompt service could be provided to those who request it. The resulting nearly ubiquitous network has benefitted broadband customers who receive service over the same network. The ROFR option would permit ILECs with COLR obligations to preserve the public benefits of their network deployment. At the same time, it would protect ILECs that have made substantial network investment in order to comply with their COLR obligations from being left with no reasonable means to recover that investment.

As proposed in the ABC Plan, the ROFR option acknowledges the business realities that have resulted from the imposition of a COLR obligation on ILECs as well as the benefits the COLR obligation has achieved for consumers. The suggestion that the ROFR option be modified to apply to the provider with the most broadband deployment, that the ROFR be deemed inapplicable in areas where there are at least two providers that exceed the threshold or that areas overlapping with a facilities-based competitor should be excluded when calculating the percentage should be rejected. These suggested modifications fail to properly take into account the regulatory structure and requirements that have applied to ILECs as COLRs and would unfairly penalize them and, more importantly, their consumers with no offsetting public benefit.[26]

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[26] The *Public Notice* also asks whether aggregating census blocks to something other than a wire center would be an improvement in the ROFR option. *Public Notice*, at 4. As explained above, the ROFR option is designed to address the various burdens and benefits of the COLR

E. The CAF Should Be Administered In A Manner That Ensures Financial Stability And Predictability So That Carriers Can Continue Broadband Deployment.

The *Public Notice* references the State Joint Board Members' recommendation that the Commission adopt specific broadband build-out milestones at years 1, 3, and 5 of deployment and seeks comment on what specific interim milestones would be effective in ensuring that CAF recipients are building out broadband at a reasonable rate during the build-out period.[27] The Joint Commenters maintain that the Commission should refrain from adopting interim milestones. It is entirely appropriate for the Commission to set a date by which a CAF recipient must fully meet its broadband build-out requirements but it would not be useful or effective for the Commission to impose interim build-out benchmark dates.

A myriad of factors, many of which may be completely out of the CAF recipient's control (*e.g.*, weather, supply chain delays, etc.), could affect the rate of deployment of network facilities. Indeed, it is reasonable to expect, for instance, that the time needed to deploy the first 20 percent of a supported network could be longer than the time required to deploy the second or third 20 percent. Similarly, linking the distribution of CAF support to the percentage of network deployment a recipient has achieved (*i.e.*, 20 percent of the total CAF funds to be made available to a recipient should correspond to 20 percent network deployment) would fail to provide any guaranteed benefit and could unfairly penalize recipients. It is entirely reasonable, for example, that a CAF recipient could require more than 20 percent of total designated support dollars to build out the first 20 percent of the required network.

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obligation. Since the ILECs' COLR obligation typically is administered on a wire center basis, it would not make sense to administer the ROFR option on a different basis.

[27] *Public Notice*, at 4.

The Joint Commenters suggest that in lieu of build-out benchmarks, the Commission should adopt reasonable reporting requirements for CAF recipients. CAF recipients should be required annually to file reports with the Commission detailing the status of their network build-out processes. Through review of these reports the Commission can monitor CAF recipients' compliance with program requirements and take action should specific situations warrant regulatory intervention.

The Joint Commenters also support the adoption of a reporting requirement for CAF recipients regarding pricing and usage allowances for their broadband services as suggested in the *Public Notice*.[28] Such reports by CAF recipients, which could be filed on an annual basis, would assist the Commission in ensuring the mandate of Section 254(b)(3) of the Act[29] that consumers in rural and high-cost areas have access to broadband services that are reasonably comparable to those in urban areas at rates that are reasonably comparable to rates charged for similar services in urban areas is being met.[30]

F. The Commission Should Have Responsibility For Administration Of The CAF.

The *Public Notice* includes a variety of questions relating to the proper role of the States in the administration of the CAF.[31] Several of these questions involve suggested State reporting requirements or compliance reports. The Commission asks whether carriers should be required

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[28] *Id.*, at 4-5.

[29] 47 U.S.C. § 254(b)(3).

[30] The Joint Commenters do not support the requirement that CAF recipients file reports detailing their prices for specific broadband services. Such a requirement is unnecessary and would result in a significant regulatory burden, particularly on smaller CAF recipients.

[31] *Public Notice*, at 5.

to file public interest compliance reports with the States and whether the States should collect information regarding consumer complaints.[32]

The Joint Commenters believe that the Commission should be responsible (with input from the States[33] and industry stakeholders) for developing, implementing and enforcing the obligations associated with the federal CAF. It is the Commission's job to administer the federal universal service program which, importantly, includes enforcement of compliance with program obligations by support recipients. Additional reporting requirements, oversight responsibilities or compliance obligations by the States are not necessary to ensure proper administration of the federal program and could lead to unintended consequences. The requirement that reports or compliance filings be made to the States could result in a significant and costly burden on smaller recipients with limited resources. At the same time, it is difficult to identify any benefit that would accrue from such filings since the States do not have the jurisdiction to enforce compliance with the federal USF program or Section 254's requirements.

The *Public Notice* also asks whether the States should determine whether the broadband deployment threshold for eligibility under a ROFR option has been met and whether the States should be charged with determining whether any charges for extending service obligations to newly-constructed buildings are reasonable.[34] The Joint Commenters believe that including the States in the process of determining if a provider has achieved the ROFR benchmark could lead to numerous State-specific data standards and interpretations of collected data. The uncertainty, confusion and potential inequity among providers that could result from myriad different State

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[32] *Id.*

[33] An appropriate role for the States could be to determine, for CAF eligibility purposes, the census blocks served by an unsupported broadband competitor.

[34] *Public Notice*, at 5.

standards and interpretations would be harmful to the federal program. In order to avoid this potential result, the Commission should establish the requirements, consistent with the ABC Plan, for determining if a provider has reached the 35 percent ROFR benchmark. The most appropriate State involvement is to assist the Commission in formulating the federal requirements.

With respect to the States' role in determining whether any charges for extending service obligations to newly-constructed buildings are reasonable, the Joint Commenters suggest that a State's role should be to verify to the Commission that the new premises exist and that the premises fit the criteria for funding through the CAF. Upon verification from the State, the provider should be permitted to recover from the CAF any costs associated with supplying broadband to that premises.

The *Public Notice* references the Commission's interest in encouraging the States to rebalance local voice service rates and asks for comment on whether, as suggested by the Ad Hoc Telecommunications Users Committee, it should adopt a benchmark for voice service and reduce a carrier's high-cost support by the amount that its rate falls below the benchmark.[35] This approach does not address the problem of unreasonably low local rates and therefore should be summarily rejected. Some State commissions have not rebalanced rates and, consequently, local voice service rates in their States remain artificially low.[36] The problem is not of carriers' making nor is it a problem that carriers always can fix. Ad Hoc's proposal would unfairly penalize carriers for lack of action by their State regulators and, importantly, would have no impact on artificially low local rates.

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[35] *Public Notice*, at 7.

[36] Some States have addressed universal service issues but not in conjunction with access rate reform and local rate rebalancing. Texas, for example, created a State universal service fund but did so in order to keep local rates in high-cost areas artificially low.

The *Public Notice* goes on to ask whether the Commission should provide the States with specific "incentives to increase artificially low consumer rates or create state USFs through, for example, the use of a monthly rate ceiling or benchmark."[37] The Joint Commenters do not object to the Commission adopting incentives for the States that have not already done so to rebalance local retail rates as long as the incentives adopted by the Commission do not penalize carriers for the lack of action by their State regulators. As discussed above, rate ceilings or benchmarks would have a punitive effect on carriers and, thus, should not be considered. Moreover, as a general matter, any incentives provided to the States must be consistent with, and supplement, the federal USF and ICC frameworks and not work at cross purposes to the federal mechanisms.[38] Thus, any incentives for the States to rebalance local rates once the Commission has begun implementation of the new USF and ICC programs cannot disrupt the federally-established transition process for intercarrier compensation rates (including the access recovery mechanism) or CAF implementation.

For that reason, the Joint Commenters do not support incentives for the States to decrease intrastate switched access rates at this time. The ABC Plan and the ROR Plan propose detailed transition plans for intrastate and interstate access rates and whatever transition plan the Commission ultimately adopts ideally will balance all stakeholders' interests. Therefore, it is not necessary, nor would it be productive, for the States to layer additional or different transition requirements on the federal plan. Carriers will have their hands full adjusting to whatever plan is adopted by the Commission and State plans would add additional complexity to an already complex adjustment process.

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[37] *Public Notice*, at 11.

[38] Under both the ABC Plan and the ROR Plan, carriers would be provided the flexibility to increase rates to consumers through increases in the subscriber line charge ("SLC") in markets where retail rates should be higher than they are today.

The State Joint Board Members recommend that high-cost support recipients undergo a total company earnings review to limit a recipient from earning more than a reasonable return.[39] The Joint Commenters urge the Commission to reject this suggestion. The new federal USF program should provide greater incentives for broadband providers to serve customers living in all areas of our country. Requiring support recipients to undergo a total company earnings review would discourage participation in the program by broadband providers who reasonably object to having the cost of deploying broadband service to consumers in rural Montana offset by the revenues generated by their provision of video service to consumers in downtown Denver. The proposal also would discourage support recipients from pushing the technological envelope by providing new and innovative services to customers throughout their service territory. Moreover, it would require the Commission to devote considerable resources to developing a methodology for such a review, as one does not exist today. The Commission should look exclusively at the cost of providing broadband service within a census block and disregard the amount of revenue a company earns on a company-wide basis in setting support levels.[40]

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[39] *Public Notice*, at 7-8.

[40] The Commission also asks the related question of whether the support mechanism should factor in either the revenues or marginal costs of video operations. *Public Notice*, at 8. The answer to this question is different for price cap and rate-of-return regulated carriers. The answer must be no for rate-of-return carriers because high-cost support for rate-of-return carriers is calculated exclusively on voice operations. Video is not a supported service. For price cap carriers, to the extent to which broadband networks in a supported census block support the provision of video services, it is appropriate to factor in the costs of video in determining support levels for that census block.

III. THE INTERCARRIER COMPENSATION REFORMS ADOPTED BY THE COMMISSION MUST TAKE INTO ACCOUNT THE NEEDS OF ALL MID-SIZE CARRIERS

The ABC Plan and the ROR Plan contain detailed proposals for transitioning terminating interstate and intrastate switched access rates to $0.0007/minute.[41] As the Joint Commenters have stated on numerous occasions, they do not support adoption of a default rate of $0.0007.[42] While the ABC and ROR transition plans represent a reasonable starting point to $0.0007 should the Commission chose (although it should not) to adopt the $0.0007 end rate, they do not reflect input from, nor more importantly, do they meet the needs of many mid-size carriers. As explained herein, several critical modifications to the transition plans must be made before the plans can be adopted by the Commission.

A. The Proposed Transition Plans To A Unified Rate For Termination And Transport Contained In The ABC Plan And The ROR Plan Must Be Modified.

ITTA has repeatedly stated that intercarrier compensation is a critical revenue component for many mid-size carriers and that elimination of (or drastic reductions to) these charges would result in substantially increased rates and decreased broadband deployment, particularly in rural areas.[43] The intercarrier compensation transition plan for price cap carriers proposed in the ABC Plan would provide for a uniform default rate of $0.0007 per minute by July 1, 2017.[44]

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[41] *See* ABC Plan, Attachment 1, at 10-11; Joint Letter, at 3.

[42] *See, e.g.* ITTA April 18th Comments, at 42-44; Reply Comments of Cincinnati Bell, Inc., WC Docket No. 10-90 (filed May 23, 2011) ("Cincinnati Bell Reply Comments"), at 12-14.

[43] *See, e.g.,* Reply Comments of ITTA, WC Docket No. 10-90, *et al.* (filed May 23, 2011), at 17.

[44] ABC Plan, Attachment 1, at 10. On July 1, 2012, each carrier would reduce its reciprocal compensation and intrastate terminating access rate for transport and switching, if above the carrier's interstate access rate, by 50 percent of the differential between the rate and the carrier's interstate access rate. On July 1, 2013, each carrier would reduce its reciprocal compensation and intrastate terminating access rate for transport and switching, if above the carrier's interstate access rate, to parity with the carrier's interstate access rate. On July 1, 2014, each carrier would

Terminating end office rates would decline to \$0.0007 by July 1, 2016 and transport rates would fall to \$0.0007 by July 1, 2017.[45] Under the ROR Plan for rate-of-return regulated carriers, terminating end office rates would decline over eight years to \$0.0007 by July 1, 2019.[46] A default compensation rate of \$0.0007 is financially similar to a mandatory bill-and-keep regime and, as such, could have serious negative consequences for mid-size carriers and their retail customers. The Joint Commenters do not endorse adoption of a default rate of \$0.0007 and instead urge the Commission to adopt an alternative plan to reduce access charges.[47] This plan

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reduce its terminating end office rates by one-third of the differential between its end office rates and \$0.0007. Transport rates would remain unchanged from the previous step. On July 1, 2015, each carrier would reduce its terminating end office rates by an additional one-third of the differential between its end office rates and \$0.0007. Transport rates would remain unchanged. On July 1, 2016, each carrier would reduce its terminating end office rates to \$0.0007. Transport rates would remain unchanged. On July 1, 2017, each carrier would unify all terminating traffic at a rate of \$0.0007 for transport and termination. The rate for transport and termination would only apply to termination at the end office where the terminating carrier does not own the serving tandem switch and it would only apply to transport and termination in the tandem serving area where the terminating carrier does own the tandem switch.

[45] ABC Plan, Attachment 1, at 11.

[46] Joint Letter, at n.1. Intrastate originating and terminating access rates would be reduced to interstate rate levels over two years beginning July 1, 2012. Terminating end office rates would then be reduced to \$0.005 over three additional annual steps. Once this occurs, the Commission would determine if the remaining transition should be slower or faster. Unless otherwise determined by the Commission, terminating end office rates would decline to \$0.0007 over three additional annual steps. Transport and tandem switching rates would remain at interstate levels.

[47] ITTA has proposed that a price-cap carrier's intrastate access rates be unified to its CALLS target rate in equal increments over three years by study area. If the local reciprocal compensation rate is above the CALLS rate, it should also be reduced to the CALLS level during the same three-year period. Rate-of-return carriers should be required to unify intrastate and interstate access rates at the interstate level. At the end of the third year, the unified interstate/intrastate/reciprocal compensation rate would be reduced to the lesser of the current rate or the carrier's next lower interstate CALLS target by study area. For the first three years of reductions, the FCC would make available to all price-cap carriers the opportunity to recover an amount equal to the annual revenue lost due to intrastate access and reciprocal compensation reductions, adjusted annually to reflect access line counts on December 31 of the preceding year. In the fourth year, carriers should be allowed to recover 50 percent of the total reduction attributed to the lowest CALLS-targeted reductions, plus 100 percent of the cumulative total from the first three years. These amounts should be recovered through increased SLCs phased in

represents a balanced approach to intercarrier compensation reform which would allow carriers to maintain affordable end-user rates and maintain sufficient revenue to continue to invest in broadband networks.[48]

As noted in Section II.D, regulated entities are constitutionally required to be afforded the opportunity to earn a reasonable rate of return based on regulated assets and costs. ILEC compensation rates have been set at current levels based on numerous rulemakings and court decisions.[49] Supreme Court precedent mandates that to change a rate-setting methodology, the Commission must offer a reasoned explanation, weigh the public interest impacts and, importantly, give the carrier a reasonable opportunity to recover its costs through an alternative associated with regulated services.[50] Because the Commission still regulates interstate access rates, it cannot arbitrarily eliminate or dramatically decrease them without determining that these funds are no longer needed or ensuring that the carrier has a reasonable opportunity to replace them.

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at $0.50 per year for residential lines during the first three years. The SLC for business lines would be phased in at $0.75 per year in the first two years and then $0.80 in the third year. At the end of the fourth year, the Commission would review market conditions, including the financial integrity of carriers subject to COLR obligations and the rate of broadband deployment by carriers serving rural areas, to determine a further plan for reform. *See* ITTA April 18th Comments, at 42-44.

[48] Other proposals such as unifying an individual carrier's rates at TELRIC levels as suggested by Cincinnati Bell and several competitive local exchange carriers ("CLECs") or at an average terminating rate as proposed by the State Joint Board Members are more reasonable than a mandatory industry-wide rate of $0.0007 and should also be considered. *See* Cincinnati Bell Reply Comments; Comments of Cbeyond, Inc, *et al.*, WC Docket No. 10-90 (filed April 18, 2011), at 4-14; State Member Comments, at 143-145.

[49] *See, e.g. Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786 (1990); *Access Charge Reform, et al.*, Sixth Report and Order in CC Docket Nos. 96-262, 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000).

[50] *Duquesne Light*, at 315.

Should the Commission decide to follow the recommendation of both the ABC Plan and the ROR Plan and adopt a framework that calls for a $0.0007 default rate at the end of a transition period, critical modifications must be made to the transition processes proposed for both price cap and rate-of-return carriers. The transition plans must be adjusted to provide for a two-year review period during which the Commission would be required to conduct a proceeding to determine how the transitions are progressing and whether any changes in the length of the transition period, the steps in the transition process or the default rate that will apply at the end of the transition period should be made.

For price cap carriers, the Joint Commenters propose that the two-year suspension and review period commence at the point in time that each carrier has reduced its terminating end office rates by one-third of the differential between its end office rates and $0.0007. For rate-of-return carriers, the review period would commence at the point in time that carriers have reduced their terminating end office rates to $0.005. This important modification to the transition plans has its genesis in the element of the ROR Plan proposal that provides the Commission with the opportunity to determine, once terminating end office rates are reduced to $0.005, if the remaining transition should be slower or faster.[51] The crucial differences are that the Joint Commenters' modification would require the Commission to conduct a proceeding and make an affirmative determination as to whether the remaining transition should be changed and the transition would not continue during the pendency of that proceeding.[52]

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[51] *See* Joint Letter, n.1. The ABC Plan does not contain a corresponding opportunity for Commission review.

[52] The Joint Commenters maintain that the transition should not continue while the Commission is conducting the review process. However, should the Commission decide not to suspend the transition while it conducts its review, it nonetheless must be required to make an affirmative decision as to whether the transition should be changed by a specified date.

The Joint Commenters maintain it is eminently reasonable to provide for a two-year review period in the transition process for both price cap and rate-of-return carriers. The universal service and intercarrier compensation reforms under consideration would fundamentally alter the regulatory landscape and would compel all carriers to comprehensively reassess the way they operate. It is impossible for the Commission or any industry stakeholder to know at this time what the precise impacts or fallout from these changes will be. It is equally impossible to know what the status of the country's economic health will be in several years. It is thus quite possible that factors that are unknown and cannot be determined today will play a significant role in how these reforms impact the telecommunications industry. The inclusion of a two-year review period would allow the Commission to take each of these factors into account and, if necessary, adjust the transition plans to provide a more rational reform process that better serves the public interest.

B. The Access Recovery Mechanism Must Operate In A Rational Manner.

For purposes of calculating the access recovery mechanism ("ARM"), the ABC Plan proposes a $30/month rate benchmark for price cap carriers and the ROR Plan proposes a $25/month benchmark, both of which are structured as a ceiling on consumer rate increases via the federal SLC.[53] The stated rationale for this component of the plans is to limit increases in consumer rates in States where such rates have already been raised as part of intrastate access reform.[54] In response, the Commission poses several questions designed to determine whether this aspect of the plans could be improved. In particular, the *Public Notice* seeks comment on whether the proposed ceilings are sufficient to mitigate any potential consumer impacts in States where retail rates have already been raised, whether under the ABC Plan the benchmark rate

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[53] ABC Plan, Attachment 1, at 12; Joint Letter, Attachment 3, at 1.

[54] *Id.*

should be the higher of the rate as of January 1, 2012 and the rate at future points before annual access recovery amounts are calculated or whether the States should be responsible for contributing a certain dollar amount per line to aid in access recovery.[55] As discussed below, none of the suggested modifications should be adopted.

The benchmarks in the ABC Plan and the ROR Plan have been included in an effort to mitigate any potential consumer impacts from possible SLC increases in States where consumers today are paying rebalanced (*i.e.*, higher) retail rates than consumers in States that have not yet rebalanced rates. While the Joint Commenters suggest that benchmarking consumer rates in this manner may not be necessary because competitive forces should ensure that consumer rates remain at reasonable levels, the benchmark rate level proposed in the ABC Plan ($30/month) is an acceptable means to protect consumers from any potential harms caused by additional increases in their monthly retail charges during the term of the ARM. The Commission should make clear, however, that as the ARM is phased out (as provided for in the ABC Plan) the justification for a benchmark ends and the benchmark rate should be phased out.

With respect to the Commission's question as to whether under the ABC Plan the consumer monthly rate for purposes of calculating access recovery should be taken as a snapshot as of January 1, 2012 or should fluctuate in future years if consumer rates increase due to State rate rebalancing, the Joint Commenters urge the Commission to endorse calculation of access recovery during the entire life of the ARM on the basis of the consumer monthly rate as of January 1, 2012. The proposed annual maximum SLC increases and the specific consumer rate benchmarks were crafted to carefully balance the interests of consumers and the business needs of carriers and are integral components of the overall intercarrier compensation reform

[55] *Public Notice*, at 11, 12.

plans proposed for price cap and rate-of-return carriers. Adoption of the Commission's suggestion would disrupt the delicate balance of interests the plans reflect. At the same time, the suggested modification would add a significant degree of complexity to the administration of the ARM for both the Commission and the industry with little to no corresponding benefits.

Likewise, the Joint Commenters urge the Commission to refrain from imposing an obligation on the States to contribute a certain dollar amount per line to assist in access recovery. The States are not on an equal footing with respect to intrastate access reform/retail rate rebalancing. The States are at various stages in the reform process, have various State law requirements, and have adopted or are considering a variety of reform structures. It therefore is not feasible to identify a single one-size-fits-all contribution mechanism that would be appropriate for all States. In addition, some States may be unable to (or chose not to) fulfill their contribution obligation and in those situations carriers could be unjustly penalized for the States' failure to act.

The Commission references the ABC Plan's call for "annual true-ups" in the ARM to adjust for possible increases or decreases in minutes of use and asks in the *Public Notice* whether that process should be modified or whether an alternative mechanism to reflect increased or decreased minutes of use should be adopted.[56] As a threshold matter, the Commission's characterization of the annual ARM adjustments as a true-up may be confusing. In the typical telecommunications regulatory context, a true-up constitutes a look backward to assess whether amounts assessed or paid were proper based on established criteria and adjustments are made in the amounts assessed or paid for the prior period to reflect the application of the criteria. In the manner proposed in the ABC Plan, the annual adjustments

[56] *Public Notice*, at 14.

would be prospective, *i.e.*, the amounts carriers receive from the ARM in the future would be adjusted based on application of the established criteria, and the amounts they received from the ARM in prior years would not be affected.

The Joint Commenters urge the Commission to implement the annual ARM adjustment process as specified in the ABC Plan without modification. Similar adjustment processes are in effect for funding programs in various States today and, thus, have been road-tested. The proposed annual adjustment process is relatively simple to administer and easy to understand and would properly reflect carrier-specific increases and decreases in minutes of use over the life of the ARM.

The Commission should reject suggestions that it modify the annual ARM adjustment process under the ABC Plan to incorporate a baseline for recovery that would be 2011 access revenues subject to reform, reduced by 10 percent annually to account for declines in demand regardless of whether demand decreases more quickly or more slowly.[57] Carriers are experiencing changes in switched access minutes of use and revenues to varying degrees and at varying rates of decline. Use of a single default negative growth rate therefore would not be equitable. The 10 percent default rate would have the effect of providing additional support to those carriers who are not experiencing declines in demand at the default level and would penalize carriers whose actual demand decline is above the default level. The process described in the ABC Plan represents a far more reasonable means to capture changes in access demand during the pendency of the ARM.

[57] *Public Notice*, at 14.

C. The Commission Should Not Attempt To Reform Originating Access At This Time.

The *Public Notice* also seeks comment on whether the Commission should address originating access as part of comprehensive reform.[58] It is not feasible to consider reductions in originating access rates if the overall reform plan must operate within (and not exceed) the current $4.5 billion USF high-cost budget. The ABC Plan and the ROR Plan propose reducing only terminating access rates in order to keep within the $4.5 billion federal budget. It is both rational and preferable to reform terminating access rates first since doing so would eliminate problematic current arbitrage schemes and access charge disputes that are diverting resources from broadband deployment. The Commission can revisit the need to reform originating access rates at a later date.[59]

IV. DIFFERENT RULES ARE NECESSARY TO MEET THE UNIQUE NEEDS OF CARRIERS IN ALASKA AND HAWAII

In certain circumstances, special rules must be crafted to meet the particular needs of carriers. The States of Alaska and Hawaii present environments and regulatory challenges that the Joint Commenters acknowledge warrant the adoption of special intercarrier compensation and universal service reform rules. As the Commission has recognized, Alaska represents "a unique combination of service provisioning and infrastructure expansion challenges not confronted elsewhere in the nation."[60] As noted by ACS, "Alaska has a very small and geographically dispersed population, extremes of terrain and temperature, and dramatic distances

[58] *Public Notice*, at 15.

[59] One advantage of deferring originating access reform is that it would allow the Commission and industry to take into account the regulatory and business environment that will result from terminating access reform and allow the Commission to make 'corrections' to address any changes in the environment or unintended consequences of its previous reform efforts.

[60] Comments of Alaska Communications Systems Group, Inc., WC Docket No. 10-90, *et al.*, (filed Apr. 18, 2011), at 2.

from the 48 contiguous states … Providers face challenges unknown in other parts of the country …"[61] Hawaii's challenges are similar and equally significant. Hawaiian Telecom, Inc. faces "the unique challenges of providing service to a state that is geographically isolated, comprised entirely of islands separated by deep ocean channels, characterized by dramatic changes in topography, climate, and character across very short distances" with a "highly dispersed population."[62] It is sound public policy for the Commission to take into account the unique circumstances facing service providers in Alaska and Hawaii and craft universal service and intercarrier compensation rules that meet the needs of the providers and, thus, consumers in those States.[63]

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[61] *Id.*, at 4.

[62] *Hawaiian Telecom, Inc. Petition for Waiver*, WC Docket No. 08-4 (filed Dec. 31, 2007), at i.

[63] The Joint Commenters do not propose particular rules for Alaska or Hawaii but instead defer to the rules proposed by providers who operate in those States.

V. CONCLUSION

For all of the forgoing reasons, the Joint Commenters urge the Commission to address universal service and intercarrier compensation reform in the manner proposed herein.

Respectfully submitted,

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